NATIONAL IMMIGRANT JUSTICE CENTER

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Know Your Rights

Information Packet About Detention, Deportation, and Defenses Under U.S. Immigration Law

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INTRODUCTION

You are currently being detained by Immigration & Customs Enforcement ("ICE"), part of the Department of Homeland Security ("DHS"), an agency of the United States Government. DHS says that you may not have the right to stay in the United States and you may have to leave the country.

There are several legal procedures DHS can use to remove you from the country. Some of you will be able to see an immigration judge, while others will not have this option. Every case is different and depends on personal circumstances.

CATEGORY 1: Immigration Court Proceedings

Those of you who received a document called a "Notice to Appear" are in removal proceedings and will see a judge. The judge will decide whether you should be removed from the United States. "Removal" is the official term for deportation.

For those of you who <u>are</u> in removal proceedings in front of an immigration judge, there are different reasons why you may be here:

- For some of you, DHS says that you should be removed because you do not have permission to be in the country.

- Others of you came here legally with a visa or you have legal permanent residency. But DHS says that you committed a crime or violated an immigration law and that you should be removed.

CATEGORY 2: Administrative Removal Orders

Some of you may already have removal orders without ever seeing an immigration judge. This may occur if:

- you were arrested by DHS at or near the U.S. border or international airport (expedited removal order), **OR**

- you have entered the United States without permission after having been deported or removed (reinstatement of removal), **OR**

- you have been convicted of an aggravated felony and you do not have legal permanent resident status in this country (final administrative removal order), **OR**

- you entered the United States lawfully without needing a visa and waived your right to see a judge (visa waiver removal).

If you are in this situation, then you will not see an immigration judge unless you fear harm in your home country and pass a credible or reasonable fear interview with the Asylum Office. Not all of the information below will apply to you.

CATEGORY 3: Unexecuted Removal Orders

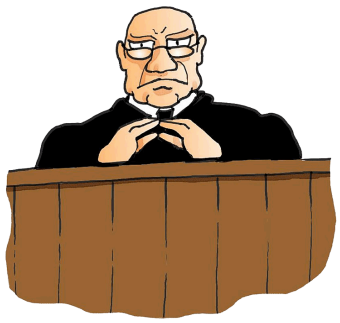
If you previously had court before an immigration judge, the judge ordered your removal or granted voluntary departure, and you never left, DHS can now use that order against you. If you had a court hearing but never went, the immigration judge very likely ordered that you be deported in your absence. If you are in this situation, you will not be able to see an immigration judge unless you successfully reopen your prior proceedings.

CATEGORY 4: Stipulated Removal Orders

Some of you had the right to see an immigration judge but already signed a stipulated order of removal agreeing to be deported. You are no longer in removal proceedings. You have signed that you agree to your removal and do not wish to see a judge. Immigration officers will now begin the process of returning you to your home country.

Note: If you do not fit the description of someone with a removal order but you have not received a Notice to Appear, you should check with an immigration officer to see what kind of proceedings you are in.

IMMIGRATION COURT PROCEEDINGS

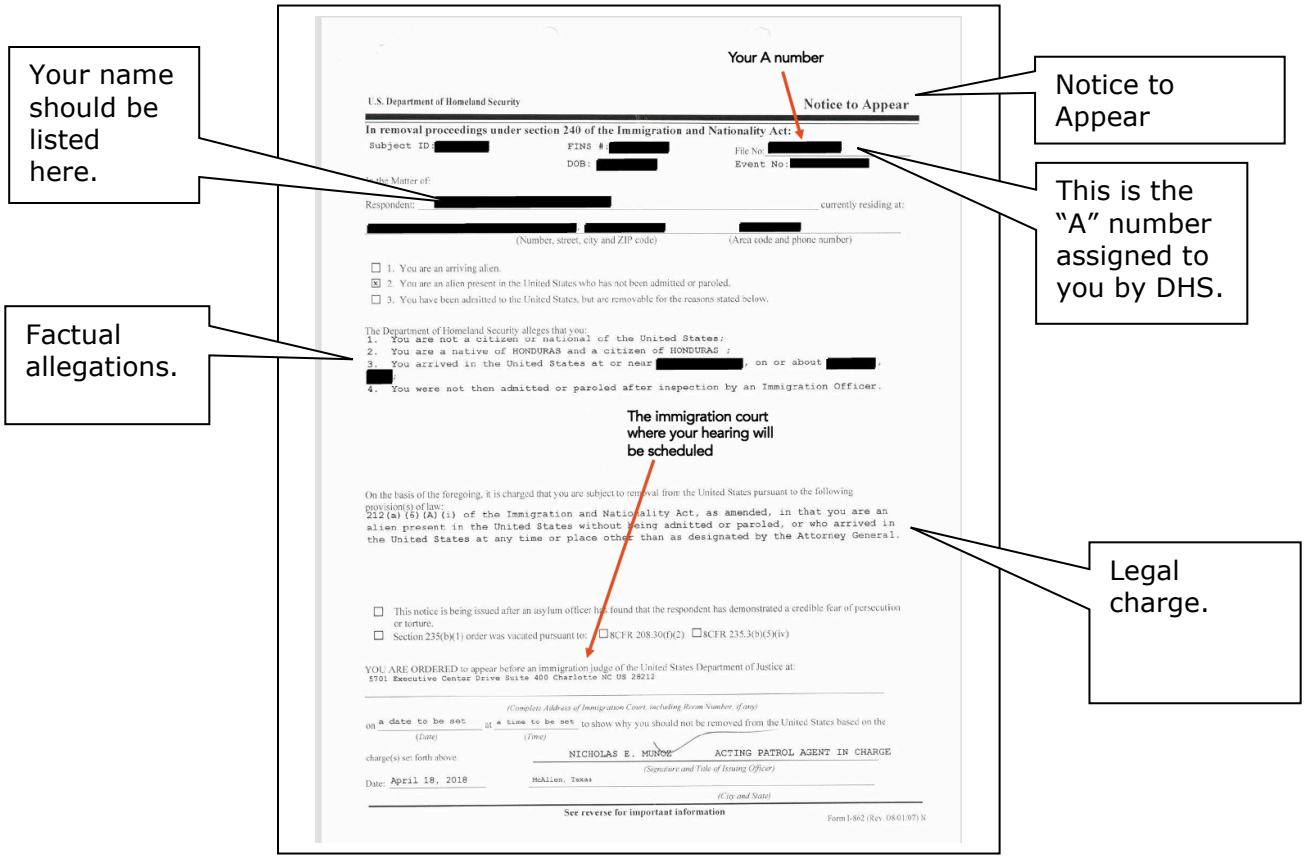


Types of hearings:

There are three types of immigration court hearings: a "master calendar" hearing is a preliminary hearing at which the case is discussed, applications are filed, deadlines are issued, and some decisions are made. A "bond hearing" – which can sometimes occur on the same day as a "master calendar" hearing – is limited to deciding whether you can be released from detention by paying a "bond." A "merits" hearing, or "individual" hearing, is like a trial, where the judge hears testimony and considers evidence. You will generally have a merits hearing only if the judge finds that you are eligible to apply to stay in the United States and you file an application with the court.

At your first master calendar hearing the judge will explain your rights. You have the right to hire a lawyer, but the government will not pay for or provide that lawyer. There are no public defenders for Immigration Court. Before your hearing, an immigration officer should have already given you a list of free or low cost legal services in the area. If you did not receive this list, ask the judge for a copy. You can also ask the judge for more time to find a lawyer if you need it.

If you are ready to talk to the judge at your first master calendar hearing, the judge will ask whether you agree or disagree with each charge in the Notice to Appear (commonly known as the "NTA"). If you are in removal proceedings before an immigration judge DHS should have given you a document called a Notice to Appear. It contains information DHS believes about you including, your street address, where you were born, the date you came to the United States, and whether you violated any criminal or immigration laws. It also explains why the DHS thinks you may have to leave the United States.



If you do not think that you received a Notice to Appear from DHS, you should ask an immigration officer for a copy as soon as possible. If you still do not receive an NTA, you should ask the judge for a copy at your first hearing.

It is very important for you to review the charges and allegations contained in the Notice to Appear carefully. If you do not think the charges are correct or you want to see evidence about your charges, you can deny the charges and ask the government to prove its case. Take special note to see if DHS says that you have been convicted of an aggravated felony. This charge has very serious consequences. Please see pages 12-13 for more information on what types of crimes may be aggravated felonies.

If the immigration judge decides that the charges against you are correct, the judge will then decide whether you have a way to legally stay in the United States. There are several

defenses against deportation, including cancellation of removal and asylum. You will be given an opportunity to fill out an application and bring it back to court.

You can also request to have a bond hearing during your master calendar hearing. Bond hearings are considered separate from removal hearings, and so the judge will go off the record to conduct the bond hearing. See page 14 for more information about release on bond

If you file an application with the court, the judge will schedule your case for an "individual" or "merits" hearing. This is your trial at which the judge will consider all testimony and written evidence and then decide whether to grant your application. You should be prepared to explain your full story to the judge at this hearing. If you have witnesses, they should plan to attend your merits hearing as well. If witnesses are not able to attend, they should submit declarations or letters to the court in advance of your merits hearing.

Before making the decision whether or not to fight your case, it is important for you to understand the consequences of removal. First, if you are removed, you lose any permission you have to stay in the United States, including any visa that you previously had. Second, if you have lawful permanent resident status, being deported will terminate that status. Third, if you are ordered removed, you cannot legally return to the United States for at least ten years, and in some cases ever, unless you obtain special permission from the United States government to return.

It is a crime to reenter the United States illegally after you have been removed. If you reenter the United States illegally after you have been removed from the country, it will be a federal felony offense. If you are caught, you will likely be sentenced to a prison term; if you have been convicted of crimes, particularly aggravated felonies, you could be sentenced to prison for up to twenty years for illegal reentry. In addition, if you reenter without permission, you will not receive any more hearings before the Immigration Court. The Department of Homeland Security is able to "reinstate," or use once again, your prior order of deportation and deport you again, without allowing you to see an immigration judge.

If the immigration judge does enter an order of removal against you, you have the right to appeal this decision to the Board of Immigration Appeals ("BIA"). See page 30 for more information on appeals to the BIA.

DHS's Charges Against You:

There are several different reasons that DHS may be trying to deport you. If you entered the United States without permission, or you presented yourself at a port of entry (land border or airport) without proper documents allowing you to enter the U.S., DHS can try to deport you for being in the United States without permission even if you do not have a criminal record.

Likewise, if you came on a temporary visa, such as a student or tourist visa, or through the visa waiver program but did not leave the country after your permission to be here expired, DHS can try to deport you for being in the United States without permission even if you do not have a criminal record.

If you have permission to be here, such as if you are a lawful permanent resident or refugee, you can still face deportation if you have done something against the law, either in violation of criminal law or civil immigration law. If you do not have permission to live in

the United States, DHS can use both your lack of lawful status and criminal history against you. See pages 10-14 for more information about how criminal offenses can affect you.

OTHER TYPES OF PROCEEDINGS:

Expedited Removal Orders:

These orders apply to non-citizens who are detained at the airport or other port of entry while coming into the U.S. Additionally, certain individuals can be served expedited orders if they are undocumented and cannot show that they have been in the United States for a certain period of time. In the past, this has only applied to people who were detained within 100 miles of the U.S. land border and who could not show they had been here for at least two weeks.

People with expedited orders do not have a right to see an immigration judge or apply for most defenses against deportation. However, if you have an expedited order and are afraid of returning to your home country, you should tell ICE and request a "credible fear interview" with the Asylum Office. In this interview, a DHS Asylum Officer will ask you about your fear of returning to your country. You, as an asylum-seeker, may consult with other people (such as a lawyer or legal representative) prior to your credible fear interview. Any person with whom you choose to consult may be present at the interview and may be permitted to present a statement at the end of the interview.

After your interview, if the DHS asylum official determines you might be able to win an asylum case, your case will be referred to an immigration court for a hearing, though some cases might be referred to the Asylum Office instead of an immigration judge for a second interview instead of a court hearing. If you are not found to have a credible fear of torture or persecution you will be returned to your home country, but you may request that a judge review this decision before you are deported. The immigration judge must review the negative decision within 7 days of the negative credible fear determination.

If you are afraid to return to your home country, have just entered the United States, and have not been given a "credible fear interview," you should request one by writing to ICE.

Reinstated Removal Orders:

If you have previously been ordered removed, either by an immigration judge or at the border by DHS, and you subsequently reentered the United States unlawfully DHS can reinstate your prior removal order and remove you without ever going before an immigration judge. The DHS will issue you a Notice of Intent to Reinstate Prior Removal Order.

In some cases, you may be able to challenge this decision. First, if you did not receive a previous removal order – for instance, if you received voluntary departure instead of deportation – you could challenge it on those grounds. Second, if your last entry into the U.S. was a lawful one, that may be another ground to challenge a reinstatement notice. Third, if you obtained legal status after your entry, such as through the Amnesty program, Temporary Protected Status, a "V" visa, or a "U" visa, you may have arguments against reinstatement of removal. Finally, if you can show that your initial removal order was

wrong, you may be able to contest both your original removal order and your reinstatement.

If you do not agree with DHS's decision to reinstate a prior removal order, you have the right to make a written or oral statement contesting that decision. If you are detained in Illinois, Indiana, Kentucky, or Wisconsin, any written response must be sent to:
U.S. Immigration and Customs Enforcement
Department of Homeland Security
101 W. Ida B. Wells, 4th Floor
Chicago, IL 60605

If you wish to appeal DHS's decision, you must file a Petition for Review with the federal court of appeals within 30 days of DHS's final decision. See page 30 for more information on filing a Petition for Review.

If you are not able to challenge your reinstatement, but are afraid of returning to your country of origin, you can request a "reasonable fear interview" with the Asylum Office. Do so by telling your deport officer or sending them a written request. If you receive a positive decision following this interview, you will be placed in "withholding-only" proceedings where you will be able to apply for withholding of removal and protection under the Convention Against Torture. See pages 21-23 for more information about these forms of relief.

Unfortunately, if you are subject to reinstatement, most other defenses against deportation, including applications based on your family relationships in the United States, are not available to you.

Notice of intent to issue a final administrative removal order (FARO):

DHS may be able to order you removed from the U.S. without allowing you the opportunity to see an immigration judge if:
- You have been convicted of an aggravated felony and
- You are not a lawful permanent resident and are not in any other lawful status.

When will you receive a Notice of Intent for an Administrative Removal Order?

If you are not a lawful permanent resident and have been convicted of a crime which the DHS believes is an aggravated felony, the DHS will give you Form I-851, Notice of Intent to Issue a Final Administrative Removal Order ("FARO"). It is similar to the Notice to Appear which others may have received to place them in removal proceedings. The FARO contains the reasons why the DHS wants to issue a removal order against you.

What can you do when you receive a FARO?

If DHS has given you a FARO, you have the right to:

- Ask for more time to answer the charges against you
- Deny the charges and state why the charges are incorrect
- Ask for an opportunity to see the evidence that the DHS has against you
- Argue that the crimes are not aggravated felonies

- Admit that the charges are correct and waive the right to appeal a final administrative removal order to a federal court
- State the country to which you want to be removed if a final order of removal is entered against you. (The DHS may not be able to send you to the country to which you state that you want to be removed if you are not a citizen of that country.)
- Have an attorney or accredited representative represent you before DHS. If you cannot afford an attorney, you can contact one of the legal assistance organizations on the last page

If you do not agree with the charges that DHS has placed against you, you must answer DHS in writing very quickly. If a DHS officer gave you the FARO in person, then you must write to DHS within **10 days** of receiving the Notice. If you received the FARO in the mail, you must write to DHS within **13 days**. If you are detained in Illinois, Indiana, Kentucky, or Wisconsin, your written response must be sent to:
U.S. Immigration and Customs Enforcement
Department of Homeland Security
101 W. Ida B. Wells, 4th Floor
Chicago, IL 60605

How will the DHS respond to your written response to the FARO?

If you respond to DHS in writing, DHS will decide whether to issue a final administrative removal order or to place you in removal proceedings before an immigration judge. If DHS decides to place you in removal proceedings before an immigration judge, DHS will give you a document called a Notice to Appear and you will have the same rights and opportunities to apply for relief from removal described in these materials.

What can you do if a final administrative removal order is issued?

If DHS does not place you in removal proceedings before an immigration judge but issues a final administrative removal order in your case, you have the right to appeal the order to the federal circuit court of appeals. The appeal is called a "Petition for Review." You must file your Petition for Review with the federal circuit court of appeals within 30 calendar days after the DHS issues the order. The federal circuit court of appeals for Illinois, Indiana, and Wisconsin is the U.S. Court of Appeals for the Seventh Circuit. You should also ask the court of appeals for a "stay of removal"; this means that you need to ask the court to order DHS not to remove you from the U.S. while you appeal your case. A filing fee is required. If you are unable to pay the filing fee, a form to request that the court waive the filing fee is available from the court of appeals.

For more information and to obtain the forms for filing a petition for judicial review and a stay of removal, you can contact:

U.S. Court of Appeals for the Seventh Circuit
219 S. Dearborn Street, Room 2722
Chicago, IL 60604
Phone: 312-435-5850

Additionally, even with a FARO, you still have the right to request to stay in the United States based on harm you would suffer if sent back to your country of origin. If you are afraid to return to your country of origin, you should request a "reasonable fear interview" with the Asylum Office by writing to or telling your deportation officer. If you pass this interview, you will be permitted to apply for withholding of removal and protection under the Convention Against Torture in front of the immigration judge.

Visa waiver removal orders:

If you entered the U.S. under the visa waiver program, or ESTA, you do not have the right to see an immigration judge because, when you entered, you signed a form agreeing that you would not contest your deportation. There is still an exception for people who are afraid to go back to their country of origin. If this is your situation, tell your deportation officer about your fear. You will then be referred to the immigration court for "asylum-only" proceedings.

Unexecuted removal orders and motions to reopen:

If you were ordered removed or granted voluntary departure in the past, but never left the U.S. after receiving that order, ICE can now use that same order against you to deport you. You will not have the right to see an immigration judge.

If you have a prior removal order but wish to apply for a form of relief before the immigration judge, or if you wish to make a legal argument that the decision made in your case is wrong, you may be eligible to reopen your case in order to appear before the immigration judge. To do so, you will have to file a motion, or written argument, at the place where your final removal order was issued. If you missed court and were ordered removed in your absence, or if you were present in front of an immigration judge when he ordered your removal and you did not appeal that order, you should send your motion to the immigration court that ordered your removal. If you appealed the immigration judge's decision to the Board of Immigration Appeals, and the Board of Immigration Appeals dismissed your appeal, your motion will have to be filed at the Board of Immigration Appeals rather than with the immigration court.

If you were ordered removed because you did not appear in court, you will need to explain why you did not go to court. If you can show that you did not have notice of your hearing, or that exceptional circumstances prevented you from attending your hearing (for example, you were in criminal custody or in the hospital), you may be able to reopen your case for this reason.

Generally, motions to reopen must be filed within 90 days of your removal order, and motions to reconsider must be filed within 30 days of your removal order. However, you may be eligible for an exception to this rule in certain situations, such as if you did not have notice of your hearing, exceptional circumstances prevented you from attending your hearing, or you are seeking asylum based on changed circumstances in your home country.

In your motion, make sure to include your name and A#, why you want to reopen your case, why you missed your prior hearing (if applicable), and what type of application you want to pursue in front of the judge. You should include the filled out application with your motion.

If your removal order is out of Chicago and you did not appeal it to the Board of Immigration Appeals, you should send your motion to the Chicago Immigration Court at:

Chicago Immigration Court	
Non-Detained Cases	**Detained Cases**
55 E. Monroe St., Suite 1500	**536 S. Clark St., Room 340**
Chicago, IL 60603	**Chicago, IL 60605**

If your removal order is from the Board of Immigration Appeals, you should send your motion to the Board at:

Board of Immigration Appeals
Clerk's Office 5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

Make sure to send a copy of your motion to DHS in addition to the Board of immigration court or Immigration Appeals. The local address for DHS in Chicago is:

DHS/ICE Office of the Principal Legal Advisor
55 E. Monroe Street
Suite 1400
Chicago, IL 60603

Stipulated removal orders:

Even if you have the right to see the immigration judge, you may be asked by the DHS to sign a voluntary stipulated order of removal. This is a document that states that you would like to be ordered removed without seeing an immigration judge. This is not a "Voluntary Return" or "Voluntary Departure," such as the DHS sometimes offers near the border. If you agree to be deported, you will not see the immigration judge. After you sign the order, the immigration judge will review your signed order and enter an order of removal or deportation against you, and you will be barred from returning to the United States, even legally, for ten years, twenty years or permanently depending on the details of your case. You will be subject to all of the additional penalties that come from being deported, if you ever come back into the United States. You have the right to consult an attorney before signing for your removal. You may be eligible for relief from removal and will not be able to pursue that relief if you sign a stipulated order of removal.

If you have already signed a stipulated order of removal and now wish to see the judge, you may be able to take back your order if it has not yet been signed by the immigration judge by writing to ICE. If your order has already been signed by the judge, you will need to write to the immigration court right away to ask that the judge reopen your case. You should use the address above for the immigration court and should also send a copy of your request to DHS at the address above.

CRIMINAL CONVICTIONS AND DEPORTATION

If you do have certain types of criminal convictions, DHS can also use these against you. If you are a lawful permanent resident of the United States, it is likely that DHS is trying to

deport you because of criminal convictions or because you have done something else that DHS considers to be against the immigration law.

Not all criminal offenses trigger grounds that DHS can charge. Therefore, you may have criminal offenses that are not listed on your Notice to Appear. This does not mean that DHS does not know or care about those offenses.

Different categories of crimes that DHS can use against you are:

- Aggravated felonies
- Crimes involving moral turpitude
- Crimes relating to drugs, including simple possession of drugs for your own use
- Crimes relating to firearms
- Crimes relating to domestic violence, stalking, violating a protection order, or child abuse or neglect

Keep in mind that the definition of "conviction" under immigration law is different from how states define this term. You may have pleaded guilty in state court and been told that you would not have a conviction on your record if you complied with the terms of your sentence. While this may be true under state law, under federal immigration law so long as you pleaded guilty and had some sort of sentence imposed (even if it was just court supervision or classes), your offense is a conviction.

POST-CONVICTION RELIEF

PLEASE NOTE that if you have criminal convictions, the immigration judge cannot change the decision of the criminal court and cannot redetermine your guilt or innocence.

However, in some limited circumstances it may be possible to go back to a criminal court to fight your conviction even after it has become final. You may need to file motions to vacate a guilty plea, to reduce a sentence, or to request post-conviction relief with the criminal court. If you are filing a motion to vacate your conviction in the criminal court solely to avoid immigration consequences, your motion, even if granted by the trial court judge, will have no effect on your removal from the United States.

If you were never advised that pleading guilty to an offense would have negative immigration consequences, you may be able to seek to vacate your plea in criminal court pursuant to the Supreme Court decision, *Padilla v. Kentucky,* 559 U.S. 356 (2010). Once a plea is vacated, your criminal case will be pending again and you will have to resolve it. If you want to explore this option further, we recommend that you talk to a lawyer who knows both criminal and immigration law. If you pleaded guilty to your crime prior to March 31, 2010, the date the Supreme Court issued its decision in *Padilla v. Kentucky*, it may be more difficult to obtain post-conviction relief.

Additionally, if your crime negatively impacts your immigration options because of the sentence you received, you may be able to return to criminal court and obtain sentence modification to reduce your sentence. You may be able to modify your sentence without vacating your plea. Sentence modification usually requires that the prosecutor in your case agree to reduce your sentence. You will also have to show that there were procedural or substantive defects in your criminal case that are the reason for the sentence modification. If you modify your sentence solely to avoid immigration consequences, this will not help your immigration case.

Finally, you may also be eligible for a gubernatorial pardon which may eliminate certain convictions for immigration purposes. Again, we recommend that you talk to a lawyer who knows both criminal and immigration law if you wish to explore this option.

Additionally, expungements serve no purpose under immigration law, and crimes you have had expunged can still count against you under immigration law.

If your criminal case is on direct appeal of the merits of the conviction (not just your sentence), or you are still within your window to decide whether to appeal, it should not be considered final for immigration purposes. You should be able to argue that DHS cannot use your conviction against you while you have exhausted your appeal rights. *See Matter of J.M. Acosta*, 27 I&N Dec. 420 (BIA 2018).

Aggravated felonies:

Aggravated felonies need not have the word "aggravated" in their title or even be felonies under state law. They are defined by Congress in the Immigration & Nationality Act ("INA") and have very serious immigration consequences.

For some types of crimes, your criminal sentence may not matter, as long as you were convicted of the crime. Your crime may be an aggravated felony even if you

were not sentenced to any jail time at all and even if the state in which you were convicted considers your crime to be a misdemeanor.

- Murder
- Rape
- Sexual abuse of a minor
- Arson
- Trafficking in drugs, including possession with intent to sell or distribute drugs as well as manufacturing, transportation, importation, and delivery of drugs
- Certain offenses dealing with firearms, such as trafficking in firearms or being a felon or undocumented alien in possession of a firearm (but only if you were charged this way), or possessing explosive devices
- Fraud or income tax evasion, if the victim lost $10,000 or more
- Money laundering over $10,000
- Alien smuggling (unless it was your first and you were helping only your husband, wife, child or parent)

Other crimes are aggravated felonies only when you received a term of imprisonment of <u>one year or more</u>. For these crimes, it does not matter whether you actually had to serve the sentence or not, just that the judge gave you the sentence. Examples of such offenses are:

- A crime of violence (most crimes involving intentional force or injury to others, or a threat of force or injury to others)
- Theft (including receipt of stolen property)
- Burglary (but only if it meets the common definition of burglary)
- Certain federal document fraud offenses
- Offenses relating to obstruction of justice, perjury, bribing a witness
- Offenses relating to commercial bribery, counterfeiting, forgery (including possession of a forged document), trafficking in stolen vehicles with altered identification numbers

Also keep in mind that <u>attempts or conspiracies</u> to commit any aggravated felony are also aggravated felonies.

NOTE: The law on aggravated felonies often changes and there are questions about how to interpret it. Some misdemeanor convictions can be aggravated felonies and the law may depend on the state in which you are detained. Additionally, if you were convicted of one of the above-listed crimes in a state court, there may be an argument that your crime is not an aggravated felony if the state law is in some way different from federal law. For example, the Seventh Circuit Court of Appeals has decided that the definition of "firearm" under Illinois law is broader than the federal definition of "firearm" and therefore that Illinois firearms offenses such as felon possession of a firearm are not aggravated felonies. Speak to an attorney to find out more information.

Controlled substance offenses:

Drug offenses carry serious consequences under immigration law. Most of the time, drug offenses will make you deportable. Often, they will make you ineligible to fight your case. And finally, having drug convictions on your record will prevent you from being able to re-enter the United States following deportation. There are a few exceptions:

1. If you were lawfully admitted to the United States, one conviction relating to under 30 grams of marijuana for personal use is not grounds for deportation. It may still affect your options in other ways, however.
2. If your only drug conviction is for under 30 grams of marijuana for personal use, and you are applying for lawful permanent resident status through a close family member, you may be eligible for a waiver, either while in the U.S. or once abroad.
3. If you were convicted under a law that punishes crimes relating to controlled substances that are not outlawed under federal law, and the prosecutor did not need to prove the exact drug in your case in order to convict you, you may be able to argue that your drug offense does not have immigration consequences. The Illinois simple possession offense for small amounts of drugs other than meth is an example of such a statute.

Crimes involving moral turpitude:

Crimes involving moral turpitude are usually crimes that society considers to be wrong, such as stealing or causing harm to another person. Examples of crimes involving moral turpitude are:

- Theft (most of the time)
- Burglary (in some circumstances)
- Robbery
- Fraud
- Forgery
- Intentionally using false documents to obtain a benefit or defraud the government
- Lying to a law enforcement agent in order to mislead him or under oath
- Some types of assault and/or battery, particularly where your crime involved either intentionally causing bodily harm to someone or recklessly causing great bodily harm to someone or involved a weapon
- Some types of domestic violence, particularly where your crime involved causing bodily harm to a member of your household

Crimes relating to domestic violence and/or violating a protection order:

Certain domestic violence offenses have deportation consequences, while others do not. Generally, to have immigration consequences, a DV offense must have involved intentionally harming a domestic partner.

Violating a protection order also triggers deportability, but only if the portion that one was found to have violated related to contact with the protected party.

Crimes relating to child abuse or neglect:

Convictions relating to child abuse, neglect, or abandonment also have deportation consequences. Most of the time, the child need not have been actually harmed in order to trigger this ground.

GETTING RELEASED FROM IMMIGRATION CUSTODY

Release on bond:

Although DHS has detained you, you may be eligible for release under bond. DHS will make an initial determination as to whether you qualify for a bond and what the bond amount should be. You can ask the immigration judge to reconsider your bond. However, the judge cannot order your release or set a bond if you were detained at a port of entry, such as the airport or land border, or if you have been convicted of certain types of crimes. **Generally speaking, most of the types of criminal convictions discussed on page 10 will make you ineligible for bond and you will have to remain in detention while you fight your immigration case**. However, there are a few exceptions:

1. If your conviction is before 1998, and you were released from jail for that crime before October 9, 1998, you may still be eligible for bond.

2. If (1) you have only one conviction; (2) it is not an aggravated felony; (3) it does not involve drugs or firearms; and (4) it is a misdemeanor for which you did not receive a sentence of more than 180 days, you are probably eligible for bond.

3. If (1) you were lawfully admitted to the United States; and (2) your conviction relates to possession of marijuana under 30 grams, or (3) you have only one crime involving moral turpitude, and it was within five years of admission, but your sentence was under one year jail time, you are probably eligible for bond.

Consult an attorney to confirm whether or not you are eligible for bond.

> If you want to ask for a hearing to determine whether you are eligible for bond and what that bond amount should be, you can write to the Immigration Court and ask for a bond hearing or simply tell the judge that you would like a bond hearing at the start of your master calendar hearing. It is important to know that the immigration judge will only give you **one bond hearing**. Once you have been given a bond, you can pay this bond until the judge makes a decision regarding whether you can stay in the United States, unless the judge takes away your bond.

If you are eligible for bond, the immigration judge has the power to give you a bond (if you don't have a bond set in your case yet), to raise the bond amount set by the DHS, and to lower the bond amount set by the DHS. The judge can also take away your bond completely. The immigration judge will look at **two main factors** in deciding whether to set a bond or change the bond amount set by the DHS:

- Whether you will be a danger to the community and
- Whether you will be a flight risk if you are released.

To decide whether you will be a **danger to the community** if released from DHS custody, the immigration judge will consider the nature and seriousness of the crime you committed. Also, the judge will look to see if you have made any effort to rehabilitate or reform yourself. Keep in mind that a judge may find even misdemeanor offenses very serious, especially if they involved or could involve harm to other people, such as battery offenses and driving under the influence.

To decide whether you will be a **flight risk**, the immigration judge will look to see if you have ties to family in the U.S., ties to the community where you want to live, own any property in the U.S., and the possibility of any defense that you may have to removal or deportation. The immigration judge may also ask you if you promise to come to court for

all of your hearings and will consider whether you have a history of failing to appear at other types of court hearings.

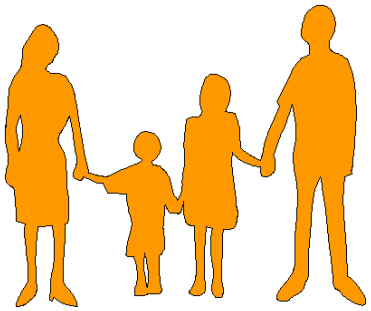
The law states that the minimum bond amount is $1500. You, your family, or friends will have to pay 100% of the bond amount to the DHS. The money will be returned to the person who pays the bond if you obey the judge's orders. In some cases, you may be able to argue that the judge should release you on "conditional parole" instead of a monetary bond. Talk to an attorney about these arguments.

The amount of the bond will be negotiated before the immigration judge and the DHS trial attorney. You are encouraged to ask the immigration judge to set or lower the bond to the minimum amount that you can pay and, if necessary, work your way up to the maximum amount you can pay.

How can I obtain a reasonable bond?

- **In-court testimony of close family members <u>who have legal status in the U.S.</u>** They need not speak English as the court will provide a translator if advance notice is given. Your family members should be prepared to discuss the nature of their relationship with you; how they have seen you change, if at all; what kind of person you are; and what hardship they will suffer if you continue to be detained or are deported to your country.

Family members who want to go to court for immigration hearings of persons in DHS custody in Illinois, Indiana, Wisconsin, or Kentucky can attend hearings in person at 536 S. Clark Street, 3rd floor, Chicago, IL Illinois 60605. However, the detained person appears via teleconferencing rather than in person. You will be far away from the courthouse, watching the hearing on television from your detention facility; your lawyers, the judge and your family will be in the courtroom at 536 S. Clark or they may also appear remotely via video teleconference. Witnesses may be able to attend hearings remotely via Webex or teleconference.Check the immigration court's website for the latest details on how to appear remotely at https://www.justice.gov/eoir/find-immigration-court-and-access-internet-based-hearings or call the Chicago Detained Court at 312-294-8400.



- If the family member(s) cannot go to court, a letter, <u>notarized if at all possible,</u> may be submitted to the court. All letters and documents not in English need to have an attached English translation.

<u>All</u> letters submitted should have the person's address and a telephone number where he/she can be reached. Also, if the family member has lawful status, they should submit proof of his/her lawful immigration status, such as a copy of his/her green card or a copy of his/her U.S. birth certificate or naturalization certificate. If they do not have such proof of immigration status, they could also submit other copies of identity documents such as valid state IDs or driver's licenses. Your family members should have the original documents with them if they come to court for your hearing.

- **A letter from an employer which states that if you are released, then you will have a position waiting for you.** This letter should be on official letterhead.

If the company does not have letterhead, it should be notarized. If you have worked previously for this company, the letter should also state the length of employment and what kind of employee you have been. The letter may also state what your job duties were.

- **Evidence of rehabilitation.** Evidence of rehabilitation can include participation in drug or alcohol programs, certificates for the completion of coursework while detained, a statement from a counselor/psychologist, an affidavit from a family member, a letter from your probation officer, and/or proof of employment while you were incarcerated.

If you have the possibility of participating in any of those programs, courses or therapies now, you should consider the possibility of doing so.

- **Evidence of community involvement.** If you have had any involvement in community organizations (such as a church, mosque, synagogue, soccer club, neighborhood organization, school organization, etc.), submit a letter, preferably on letterhead or notarized, from the organization. If you have done any volunteer work, submit a letter from the volunteer organization about the work that you did.

- **Evidence of involvement in religious activities.** If you attend religious services regularly, submit a letter from the leader of the religious organization.

- **Evidence that you completed high school or a vocational, college, or university degree.** Proof can include proof of registration and attendance in the courses, such as a transcript or a copy of school records.

- **Copies of titles of property that you own, such as a home or car.**

- **Copies of recent income tax returns that you filed.**

If your family is bringing these documents to the court for your bond hearing, they should bring **three copies of each document** that you want to give to the immigration judge to consider. The immigration judge, the DHS trial attorney, and you should each have a copy of the documents. You should keep a copy of the documents for your own records.

If you are detained in Illinois, Indiana, Wisconsin, or Kentucky, you can write to the immigration court to request a bond hearing or send supporting documents to the following address:

Executive Office for Immigration Review
Immigration Court
536 S. Clark St., Room 340
Chicago, IL 60605

Send a copy to the government at:

DHS/ICE Office of the Chief Counsel
55 E. Monroe Street
Suite 1400
Chicago, IL 60603

Posting Bond and Release

Who can pay the bond?

Any adult, 18 or older, who can prove they are a U.S. Citizen or Legal Permanent Resident. You (the detainee) cannot pay your own bond.

What if I cannot afford my bond?

If you cannot afford to post the bond set by ICE or the immigration judge, and you are a resident for Illinois, Indiana, Wisconsin, or Kentucky, you may be eligible for free bond payment assistance through the Midwest Immigrant Bond Fund. Friends or family can submit a form to request assistance on your behalf at www.mibfc.org. For individuals outside of the Midwest, you can contact the National Bail Fund Network for assistance, www.communityjusticeexchange.org/en/immigration-directory.

Where do they pay the bond?

To pay a bond, you can go in person or go online and use the CeBONDS system. You can access it here: https://www.ice.gov/detain/detentionmanagement/bonds. You can find a detailed explanation in the Appendix A.

- The person paying the bond must be physically present in the United States to use this system.
- You can only pay using a bank transfer in CeBONDS.
    - Checks and money orders cannot be used when using CeBONDS.
    - Immigration bonds are NEVER paid using Zelle, Moneygram or Western Union (this is true for both CeBonds & in-person bond payment).
- A bank transfer for the CeBONDS system will require that you have access to a bank account. With your bank account, you will be able to access one of two types of bank transfers, the FedWire system or an ACH bank transfer.
    - FedWire is how government agencies send money to each other, and we have found that some smaller banks and credit unions don't have access to it but all major banks offer it. ACH payments are available in all banks.
    - Though the fees can range from $20 to as high as $90, we strongly encourage you to use FedWire if you can because the funds clear right away.
    - If you pay with ACH, it may take up to 3 days for the funds to clear, which means the release of the person who is detained will be delayed.

Required documentation:

- A number and name of the detained person
- Passport, green card, or REAL ID of the person paying the bond
- Social security number (actual card is not needed)
- A valid address
- Bank account with funds for bond and wire transfer fee, including account and routing number
- Address for the bank branch where the wire transfer will happen
- Printed out form with ICE's financial information (will be sent after the I-352 Contract is signed)
- Email account

Release:

You will most likely be released directly from the detention center. Sometimes there may be transportation to the nearest Greyhound Station. Contact the ICE docket officer assigned to your case to see if this is available.

Release on Parole

If you were detained at a port of entry, such as an airport or over a bridge, and you passed a credible fear interview, DHS is required to schedule you for a "parole interview." If you are not automatically scheduled for an interview, you should send a request for consideration to your deportation officer. Parole is a way of being released from DHS custody so that you can apply for asylum outside of custody. To be granted parole, you must establish your identity to the satisfaction of DHS and show that you are not a flight risk or a danger to the community. To show that you are not a flight risk, you should have a "sponsor" with whom you can live.

Documents that will support a grant of parole include:

Proof of your identification (a valid passport, state I.D., birth certificate)
Proof that you passed your credible fear interview (copy of the DHS decision)
Proof of a sponsor, someone with legal immigration status in the U.S. with whom you can live

SAMPLE SPONSOR LETTER

SWORN STATEMENT IN SUPPORT OF
(NAME OF DETAINEE) APPLICATION FOR PAROLE

A-- --- ---
State of_____
County of_____

I, (name of sponsor), hereby state under oath as follows:

1. I am a (legal permanent resident/US citizen) of the United States (please see attached).

2. I am a (relation) of (name of detainee), an asylum applicant from (home country) who is currently detained at (name of detention facility).

3. I work as a (position) for (company/employer) at (address).

4. I am prepared to provide food and lodging for (name of detainee) for as long as his case is pending. If (name of detainee) is paroled, s/he will reside with me at the following address:

   (address)
   (phone number)

5. While (name of detainee) case is pending, I will do everything in our power to make sure that s/he attends all hearings in court.

6. If you require any further information, please call or write me at the above address.

(sponsor's signature) (date)

(notary's signature) (date)

Release on an order of supervision:

Orders of supervision can be granted by the DHS to release persons in DHS custody that the DHS cannot remove or deport from the U.S.

When will DHS consider releasing you under an order of supervision?

To be eligible for an order of supervision, you must have a final removal or deportation order. A removal or deportation order becomes final once you have waived your right to appeal or lost your appeal at the Board of Immigration Appeals. Once your removal or deportation order is final, the DHS has 90 days to remove or deport you from the U.S. to another country which will accept you. If the DHS cannot remove you from the U.S. within 90 days, then the DHS must consider whether to release you from its custody.

Who is eligible for release under an order of supervision?

This includes people from certain countries which do not accept the deportation of their citizens, (citizens of countries which no longer exist (such as the former Yugoslavia, or the former U.S.S.R.), citizens of countries where the U.S. is temporarily not deporting people, or people who aren't citizens of any recognized country. If you cannot be deported, you may be eligible for release from DHS custody under an order of supervision. Please note, however, that individuals who are released under an order of supervision may be removed at any time if removal becomes possible in the future.

Within 90 days after your removal order is final, a local DHS deportation officer will review your immigration file to determine whether you should be released from DHS custody under an order of supervision. The deportation officer will consider whether you are a **flight risk** and a **danger to the community,** and **whether your removal is reasonably foreseeable**.

Keep in mind that to be considered for release you will have to cooperate with ICE's attempts to obtain a travel document and deport you. If you do not comply with ICE's request, ICE can continue to detain you.

If the local DHS office denies your request for release, then your case will be transferred to DHS Headquarters in Washington, D.C. If you have been in DHS custody for six months **after** a final removal order then you should be released from DHS custody as long as it is not likely that you will be removed to your country of origin in the reasonably foreseeable future and as long as you fully cooperate with DHS in your removal.

Your obligations following your release:

If you released from ICE custody but still have an open case before the immigration judge or Board of Immigration Appeals, you are still required to attend all of your hearings and – if you lose your case – report for removal. Additionally, you are required to keep the immigration court or BIA informed of your current address by submitting an E-33 change of address form. ICE may also impose additional obligations, such as requiring you to report to their office periodically, which you will have to follow. Failing to comply with these

requirements, or getting charged with a crime, may lead to your being taken back into ICE custody.

Likewise, if you are released from DHS custody under an order of supervision, you will need to obey the conditions of your release, including reporting to DHS as required, avoiding criminal activity, etc. If you do not follow the conditions of your release, DHS can revoke your order of supervision, arrest you, and detain you again.

U.S. CITIZENSHIP

Sometimes people are United States citizens but do not realize it. **United States citizens cannot be removed from the United States and must be released from detention**. You ***may*** be a citizen, or be eligible for citizenship, if you answer "yes" to one of the following questions:

1. Were you born in the United States?
2. Do you have a parent or grandparent who was born in the United States?
3. Did either of your parents become a naturalized U.S. citizen, and did you become a lawful permanent resident, before you turned 18 years of age?
4. Have you ever served in the U.S. military and been honorably discharged?

If you answered yes to any of the first three questions, it is *possible* that you have obtained citizenship automatically and you should tell an immigration officer and the immigration judge. **Citizenship law is very complicated, so you should consult with a lawyer if you think you may be a U.S. citizen.** It is very important to provide as much specific information as possible in order for DHS to be able to decide whether you have United States citizenship, for example, your parents' identity, their dates and places of birth, and their periods of residence in the United States. If you are a citizen, you cannot be deported, and you will likely be released from DHS detention within days.

People who served honorably in the U.S. military may be eligible to seek citizenship even though deportation proceedings are pending. Military service does not automatically make you a citizen, but it can sometimes make you eligible to naturalize when you would otherwise not be eligible.

ASYLUM, WITHHOLDING, AND PROTECTION FROM TORTURE

There are three forms of protection for persons who fear harm or torture if they are returned to their home countries: asylum, withholding of removal and relief under the Convention against Torture (CAT). You may be eligible for one or more of these types of protection, depending on when you entered the U.S., any criminal convictions that you have, and the reason you fear that you will be harmed or tortured if the DHS deports you to your home country. Even if you are a lawful permanent resident, you may be eligible for protection from harm or torture. To apply for asylum, withholding of removal, or relief under the Convention against Torture, you will need to complete Form I-589 which you can request from the DHS and/or the immigration court. You can apply for all three forms of relief on Form I-589. If you wish to seek relief under the Convention Against Torture, be sure to check the box at the top of the first page of the application. **If you are afraid to return to your country, tell the immigration judge. If you have been told that you do not have the right to see the immigration judge because you already have a prior removal order that was reinstated or an administrative removal order, tell**

your deportation officer that you would like a "reasonable fear interview" with an asylum officer. Likewise, if you have an expedited removal order because you were detained at or near a port of entry, tell your deportation officer that you would like a "credible fear interview." If you pass this interview, you will then be able to see the judge.

Asylum

"Asylum" is one of the possible ways that you may be able to stay in the country legally. You may be able to ask for this protection in the United States if you fear you will be harmed if you return to your own country or if you have suffered harm there in the past. The threat or harm must come from the government or someone the government cannot or will not control.

You must show that the threat or harm is because of your:

- Race
- Religion
- Nationality
- Political opinion or political party membership
- Your membership in a particular social group. This could be many things, including but not limited to:
  - being a member of a village
  - belonging to an indigenous group
  - family
  - clan or tribal membership
  - student or human rights group
  - lesbian, gay, bisexual or transgender (LGBT) individuals or individuals who engage in same sex conduct
  - women fearing domestic violence or spousal abuse
  - women who oppose certain practices in their home countries such as genital mutilation

If any of the above groups describes you, but you do not want to tell anyone in the detention center about this, you can write to NIJC or call us during intake hours. All discussions with NIJC are completely confidential. Our staff respects all people regardless of sexual orientation, HIV status, race, religion, gender, and nationality. NIJC staff are experienced in talking to people who have suffered abuse.

If the only reason you left your country was to look for work and you do not have any fear of returning or have not been harmed in the past, then you probably do not qualify for asylum. In addition, if you have a general fear of violence in your home country rather than a particular fear relating to you personally, you may not qualify for asylum.

Generally, a person must apply for asylum within one year of entering the U.S. You may still be able to apply after that deadline if there were special reasons why you were not able to apply on time, if the conditions in your country have gotten worse since you came to the United States or, if you entered on a valid visa, if you apply for asylum within six months after your visa expired. Otherwise, you can only apply for withholding of removal.

In addition, if you have been convicted of an aggravated felony (see page 12), you will not be eligible for asylum. However, you may still be eligible for Withholding of Removal.

Withholding of Removal

Withholding of removal is a form of protection that is similar to asylum. To qualify for Withholding of removal, you must show that there is a substantial likelihood (more than 50% likely) that you will be harmed if you return to your home country based on your race, religion, nationality, political beliefs or your membership in a particular social group.

It is more difficult to win a case for withholding of removal than for asylum. People generally apply for withholding when they are ineligible to apply for asylum. You might wish to apply for withholding of removal if you fear returning to your country and:

- You have been in the United States for more than one year and did not apply for asylum within one year of coming to the United States, or
- You have been convicted of an aggravated felony, or
- Another bar applies to you that prevents you from being eligible for asylum.

If you have been convicted of an aggravated felony, you can only apply for withholding of removal if the sentence you received for the aggravated felony was less than five years and the judge finds that your crime was not a "particularly serious crime." Particularly serious crimes are usually those involving harm to other individuals or drug trafficking offenses.

Convention Against Torture (CAT)

A separate form of protection is available if you are likely to be **tortured** by a government official in your country or with the acquiescence or permission of the government of your home country. The United States has signed a treaty promising that it will not return anyone who fears being tortured in their home country. You may have rights under this treaty if you have this fear and if you can show the judge that it is more likely than not that you would be tortured in this manner if you returned to your home country. Tell the immigration judge or DHS if you fear torture in your home country.

CANCELLATION OF REMOVAL

"Cancellation of Removal" is one of the possible ways that you may be able to stay in the United States legally. There are multiple types of cancellation of removal.

Cancellation of Removal for People Who Are Not Lawful Permanent Residents

If you win this type of cancellation of removal, you will receive lawful permanent residence and you can remain in the country legally.

You must meet <u>four</u> requirements to ask for this type of cancellation:

1. You have lived in the United States continuously for at least the last <u>ten</u> years, either legally or illegally; AND

2. You have a spouse, parent, or child who is a U.S. citizen or legal permanent resident and you can show that they would suffer ***exceptional and extremely unusual hardship*** if you were removed from the United States; AND

3. You are a person of good moral character, AND

4. You have not had significant criminal problems. If you have served more than six months in jail during the last ten years, you are probably ineligible. If you have two or more DUI convictions over the past ten years, you may also be ineligible. Almost all felonies and drug crimes will make you ineligible. Even misdemeanor crimes, if you have more than one, may make you ineligible. In general, if DHS has included a criminal charge on your Notice to Appear, you are probably not eligible for cancellation of removal.

If you wish to apply for this type of cancellation of removal, be sure to explain to the immigration judge that you have lived in the United States for at least ten years and that you have a qualifying relative (a spouse, parent, or child here who is a U.S. citizen or legal permanent resident). If the judge determines that you are eligible for this form of cancellation, he will give you Form EOIR-42B to fill out and bring back to court.

Prior to your merits, or individual, hearing on your application, it will be very important for you to gather all documentation you can to show that you have in fact been living in the United States for at least 10 years, that you do have qualifying relatives, and that these qualifying relatives would suffer great difficulties without you. You should also gather documentation showing that you are a good person who deserves cancellation of removal.

Cancellation of removal for victims of domestic violence:

Special rules apply if you have been physically or psychologically abused by a spouse or parent who is a U.S. citizen or legal permanent resident. These rules also apply if your child has been abused by his or her other U.S. citizen or legal permanent resident parent, even if you are not married to your child's parent. In this type of cancellation, you only need to show that you have lived in the U.S. continuously for the last <u>three</u> years. You must also show good moral character and extreme hardship to yourself if you were to be deported. If you wish to apply for this form of cancellation of removal, be sure to explain to the judge that you have been the victim of domestic violence by your U.S. citizen or permanent resident spouse or parent and that you wish to apply for this type of cancellation of removal. The application form for special rule cancellation of removal for victims of domestic violence is the same as for cancellation based on hardship to qualifying relatives, Form EOIR-42B.

Cancellation of removal for lawful permanent residents:

If you are a lawful permanent resident ("LPR") in removal proceedings because you have been convicted of a crime or have another type of violation of the immigration law, you may still be able to keep your LPR status and avoid removal through this form of cancellation if you meet certain requirements.

To be eligible for cancellation of removal for permanent residents, you must show:
1. You have been a legal permanent resident for at least 5 years.
2. You have resided in the U.S. for 7 continuous years after being lawfully admitted to the U.S. in any status. This 7-year period starts with the first time you lived in the U.S. lawfully and ends with the first time you committed a crime with immigration consequences. See pages 10-13 for the types of crimes that have immigration consequences.
3. You have no aggravated felony convictions. See pages 12-13 regarding aggravated felonies.

If you are eligible for cancellation of removal, the judge will provide you with Form EOIR-42A to fill out and return to the court. Once the form is filed, you will have a merits hearing to prove you deserve cancellation of removal.

If you are eligible for cancellation of removal and you want to win your case, you will need to demonstrate more than your lawful permanent resident status. You will need to show the immigration judge that you deserve to win your case by showing positive factors such as:

- Family ties in the U.S. (LPR or U.S. citizen spouse, parents, children or siblings)
- Long residence in the U.S., especially if you came as a child
- Good work record (letters from employers)
- History of filing tax returns
- Rehabilitation (from drug or alcohol abuse or criminal behavior)
- Ties to the community, e.g. church membership, participation in community/school projects
- Hardship to you and/or to your family if you are deported.

You will need to show that the positive factors in your case outweigh the negative factors.

Waivers under former INA § 212(c):

If you are a permanent resident who was convicted of a crime before April 24, 1996 (and in some cases, prior to April 1, 1997) you may also be eligible for § 212(c) relief, if you have not had any convictions since that time. Relief under § 212(c) is different from cancellation because even if your crime is an "aggravated felony," you may still be eligible for relief.

Eligibility for § 212(c) Relief:
To qualify for a discretionary waiver under INA § 212(c), you must demonstrate that:
- You have resided in the United States for seven consecutive years
- You have not been imprisoned for 5 years or more on account of the crimes which make you removable from the United States
- You pleaded guilty or *nolo contendere* prior to April 24, 1996 (in some cases, prior to April 1, 1997)
- You have no convictions since April 24, 1996 (or April 1, 1997) that make you removable.

Depending on the facts of your case, you may be able to apply for § 212(c) relief even if you did not plead guilty to your crime. Be sure to discuss your individual facts with an immigration attorney to see if you still might qualify for a § 212(c) waiver even though a criminal judge or jury found you guilty of your crime.

How to Apply for a § 212(c) Waiver:
The § 212 (c) waiver application is submitted on Form I-191. As with cancellation, relief under § 212(c) is discretionary. As with LPR cancellation, the immigration judge will weigh your positive and negative factors to decide whether to give you another chance in the U.S.

ADJUSTMENT OF STATUS THROUGH FAMILY PETITIONS

If you entered the United States lawfully, such as on a tourist or student visa, it may be possible for you to remain legally in the U.S. through a family relative with legal status in this country. Your relative must be a lawful permanent resident or U.S. citizen in order to

help you get legal status. He or she may be able to help you by filing a "relative petition," Form I-130.

Relatives who may file a visa petition on your behalf:

Categories without waiting periods:
- Your United States Citizen (USC) spouse, USC child over 21 years of age, or your USC parents if you are under 21 years old and unmarried

Categories with waiting periods:
- Your USC parent if you are over 21 years of age or if you are married
- Your USC brothers or sisters if they are 21 or older
- Your Lawful Permanent Resident (LPR) spouse
- Your LPR parents if you are unmarried

Unless you are a spouse, parent or child (under 21) of a U.S. citizen, you will have to wait in line for a visa number before you can apply for legal permanent resident status. The "priority registration date"- the date that the DHS received the petition filed by your relative determines your place in that line. If you are not currently "at the front of the line," you can only apply for adjustment of status when your priority date moves to the front of the line. Practically speaking, unless you are in a category without a waiting period, you will be unable to adjust your status in the United States unless your relative applied for you before you were detained.

If you are eligible to apply for adjustment of status, but have had prior encounters with the DHS, a criminal history, fraud, health problems or, in certain cases, unlawful status, these issues may make the process of becoming a legal permanent resident more difficult or impossible. If you have a criminal conviction, you may be eligible for adjustment of status with a "212(h) waiver" if you can show that your U.S. citizen or permanent resident spouse, child, or parent will suffer extreme hardship if you are not allowed to become a permanent resident. Unfortunately, this waiver does not pardon drug offenses other than one conviction for possession of less than 30 grams of marijuana. Therefore, if you have any other type of drug convictions, you will be barred from applying for your green card.

Additionally, if you have resided in the United States unlawfully for more than one year, left the country and entered again unlawfully, you will be barred from adjusting status. In addition, if you make false claims to being a United States citizen you are also barred from adjustment of status.

If you entered the United States without permission, you can only apply for your green card within the United States if someone filed a visa petition for you or for your parents before April 30, 2001. Otherwise, you may have to return to your country of origin to obtain your green card there through a process called "consular processing." Because this process is complicated, especially for individuals who are in removal proceedings, it is important to talk to a lawyer before filing any paperwork.

To apply for adjustment of status in front of the immigration judge, you will need to fill out Form I-485 and complete several other steps. These include getting a medical examination and showing that you will not become a public charge if granted residency because your family member will be able to support you. If you need a § 212(h) waiver, you will need to fill out Form I-601 as well.

ADJUSTMENT OF STATUS FOR ASYLEES AND REFUGEES

If you are an asylee or refugee who never became a lawful permanent resident and are now facing deportation due to a criminal offense, you may still be eligible to apply for adjustment of status to become a lawful permanent resident. You may qualify for a waiver, or pardon, for your crimes, so long as you were not convicted of drug trafficking or an offense relating to terrorism. To obtain this waiver, you will have to show that you deserve a waiver for at least one of three reasons: (1) your family is here and you need to stay with them, (2) there are humanitarian considerations favoring letting you stay here, and/or (3) it would be in the public interest to let you stay here.

If you are a refugee and have never before submitted an adjustment of status application, you will need to send Form I-485 and the waiver, Form I-602, to U.S. Citizenship & Immigration Services (USCIS) as they will need to decide your application before the immigration judge is able to do so. If USCIS denies your application, you will then be able to reapply in front of the judge.

SPECIAL PROTECTIONS FOR IMMIGRANT VICTIMS: "T" AND "U" VISAS

Special protection is available for individuals who have been victims of certain crimes: the "T" visa is available for victims of human trafficking, and the "U" visa is available for victims of certain crimes, such as kidnapping, rape, domestic violence, and assault, which occur in the United States. In order to receive either of these protections, you would have to be 3 willing to cooperate with law enforcement in the reporting, investigation and/or prosecution of these crimes. Protections under T and U visas include temporary legal status and work authorization. T visas also provide access to public benefits. Both T and U visas allow you to eventually petition for permanent residence status ("green card"). Your immediate relatives (spouse, children, parents and siblings) can also sometimes benefit from your "T" or "U" visa.

Trafficking & Slavery – "T" Visa:

Trafficking happens where a person is forced to perform labor or services in violation of U.S. laws prohibiting slavery, involuntary servitude, debt bondage or other forced labor. You may be a victim of trafficking if you were:

- Recruited, harbored, moved, or obtained by **force**, **fraud**, or **coercion** (physically or psychologically) *for* the purposes of involuntary servitude, debt bondage, slavery, or sexual exploitation.

The type(s) of work you may have been forced to perform include (but are not limited to):

➢ Prostitution	➢ Begging
➢ Domestic Service	➢ Agriculture / farm work
➢ Factory Work	➢ Janitorial
➢ Restaurant Work	➢ Criminal Activities
➢ Stripping/exotic dancing	➢ Other Informal Labor

If someone has imposed an unreasonable debt or condition on your labor or service, or has threatened you or your family members with harm if you fail to work or provide a service, you may be eligible for protection. *Even if you performed a labor or service that is illegal*,

you may be able to obtain immigration relief. Additionally, you may still be eligible for protection if you voluntarily agreed to perform a particular type of labor or service, or agreed to be smuggled into the United States illegally, but were later forced to work or serve against your will.

To obtain a T visa, you will be expected to help law enforcement in investigating and prosecuting the criminal activity and the people responsible for harming you. If you are under 18 years of age, you are not required to cooperate with law enforcement.

Victims of other crimes – "U" Visa:

The U visa provides immigration relief to victims of certain crimes who have suffered *substantial physical or mental abuse* as a result of the crime. If you have been a victim of any of the following crimes in the United States, you may be eligible:

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Felonious Assault
- Female Genital Mutilation
- Fraud in Foreign Labor Contracting
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes

If you seek relief under a U visa, you will be expected to help law enforcement (such as the police or the Federal Bureau of Investigation or "FBI") in investigating or prosecuting the criminal activity. If you cooperate with law enforcement, even if the person who harmed you is not actually found guilty and sent to jail, you may still be eligible for a U visa. For instance, if someone committed a qualifying crime against you, and you reported it to the police, you might be eligible for a U visa. If the case is ongoing you will need to continue to work with the law enforcement agency and comply with all of their requests for help with the case. The law enforcement agency or prosecutor involved in your case will have to sign a certification form for you before you can apply for a U visa.

The U visa, if approved, can lead to lawful permanent resident status if you do cooperate with law enforcement – regardless of whether someone is eventually prosecuted for the crime, or whether you have to testify. The important thing is that you are willing to testify or help if needed.

VOLUNTARY DEPARTURE

If you have no defense or relief from removal that will allow you to remain in the United States, "voluntary departure" is a way to avoid an order of removal. With voluntary

departure, you agree to leave the United States and to pay for your trip to your home country using your own money. Voluntary departure has some advantages. Through voluntary departure, you can avoid some of the negative consequences of a deportation or removal order. You will not have a record of deportation or removal. This will help avoid some problems if you later want to return to the U.S. legally in the future, and it may also make it easier for you to travel internationally.

Not everyone is eligible for voluntary departure. If you have an aggravated felony conviction, you are not eligible for voluntary departure at any time. In addition, once you have filed an application with the court and had a full hearing on this application, other crimes within the last 5 years may make you ineligible for voluntary departure.

If you have voluntarily agreed to sign a request for an order of removal without seeing an immigration judge (a stipulated order of removal), this is NOT the same thing as voluntary departure.

There are two stages of immigration court proceedings during which you can request voluntary departure:

Pre-hearing voluntary departure:

You can ask for voluntary departure before your individual, or merits, hearing. Voluntary departure has fewer restrictions at this stage. At this stage you qualify for voluntary departure as long as you are not:

- an aggravated felon,
- deportable for terrorist activities, or
- a security risk to the U.S. government.

By asking the immigration judge for voluntary departure at this stage, you cannot go forward with any other defense to deportation and you must be able to:

- agree to give up your appeal rights,
- present your passport/other travel documents, and
- pay for your plane ticket.

Post-hearing voluntary departure:

You may also ask for voluntary departure at the end of your individual, or merits, hearing, even after the immigration judge has denied all other relief. Voluntary departure is harder to obtain at this stage. To be eligible for voluntary departure at the end of court proceedings, you must show:

- You have been physically present in the U.S. for 1 year before you were placed in removal proceedings;
- You have been a person of good moral character for the last 5 years;
- You have not been convicted of an aggravated felony;
- You are not deportable for terrorist activities;
- You have resources to pay your own way back.

If you are granted voluntary departure, but fail to pay for your own plane ticket or leave by the required date despite DHS's requests that you do so, your grant of voluntary departure

automatically converts into a removal or deportation order. You will face additional bars if you try to re-enter the U.S. or try to apply for an immigration benefit in the future.

Unfortunately, if you are granted voluntary departure while you are in DHS custody, you will not be able to leave custody prior to your departure but will instead be flown to your country directly from custody. If you are detained and do not leave by the required date set by the judge and it is of no fault of your own, DHS will normally extend your voluntary departure date.

APPEALING THE IMMIGRATION JUDGE'S DECISION

Appealing to the Board of Immigration Appeals

If the immigration judge makes a decision in your case that you do not agree with, you have the right to appeal (challenge at a higher court) the judge's decision to the Board of Immigration Appeals ("BIA"). After making a decision in your case, the judge will ask you if you accept his decision or if you wish to appeal it. If you wish to appeal your case, make sure you tell the judge that you wish to have this option when the judge makes their decision. The judge will provide you with the forms that you will need to appeal your case to the BIA, E-26 (Notice of Appeal) and E-26A (request to waive the appeal fee). You will have 30 days from the judge's decision to send this paperwork to the BIA in Falls Church, Virginia. Make sure that your paperwork **reaches** the BIA by the 30th day and that you also send a copy of your paperwork to DHS.

Board of Immigration Appeals
Clerk's Office
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

DHS/ICE Office of the Principal Legal Advisor
55 E. Monroe Street
Suite 1400
Chicago, IL 60603

Once the BIA receives this paperwork, it will put together a transcript (written version) of your immigration court hearings along with a briefing (argument) schedule that it will send to you. Both you and DHS will be able to submit written arguments about why you agree or disagree with the judge's decision. The BIA will decide your appeal based on these written arguments. You will not see a judge during your appeal. However, if the BIA decides that the judge's decision was incorrect, your case will likely be sent back to the judge and you will have another hearing.

Petitions for Review

If you lose your case at the Board of Immigration Appeals, in some cases you may be able to appeal the BIA's decision to a federal circuit court of appeals. An appeal filed at the federal court of appeals is called a "Petition for Review." If you wish to fight your case from within the United States, you will also have to ask for a "stay of removal," or permission to remain in the United States while your federal appeal is pending. A Petition for Review must be filed within 30 days of the BIA's decision in your case.

For more information and to obtain the forms for filing a petition for judicial review and a stay of removal, you can contact:

U.S. Court of Appeals for the Seventh Circuit
219 S. Dearborn Street, Room 2722
Chicago, IL 60604
Phone: 312-435-5850